THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.21312 of 1999

ORDER: (Per the Hon'ble Sri Justice T.Ch.Surya Rao)

The writ petitioners seek an order, direction or writ more particularly one in the nature of writ of *certiorari* by quashing the order dated 09-08-1999 passed by the learned Special Court in L.G.A. No.30 of 1998. L.G.A. No.30 of 1998 in turn was filed assailing the order dated 20-07-1998 passed by the learned Special Tribunal District Judge in L.G.O.P. No.6 of 1992 under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act').

The writ petitioners are respondents 4 and 5 before the Special Tribunal. Respondents 1 to 5 herein are the petitioners who filed L.G.O.P. No.6 of 1992 seeking declaration that the respondents therein committed an act of land grabbing and consequently they were the land grabbers and for a consequential direction that they might be evicted from the petition schedule land.

The brief statement of facts, which elucidate the fact in controversy, may be stated hereunder thus:

The petitioners in L.G.O.P. No.6 of 1992 claim themselves as absolute owners of the land in dispute described more fully in the schedule appended to the petition. According to the petitioners, the land in dispute was originally purchased by one

Valala Adi Lakshmamma under a registered sale deed dated 24-04-1947 and since then she had been in actual possession and enjoyment of the said extent. Since the said Adi Lakshmamma had no children and after her husband's death, she adopted Radhakrishna Murthy, who is husband of 1st petitioner and father of petitioners 2 to 5. After the death of Adi Lakshmamma, Radhakrishna Murthy succeeded to the said property, who also later died on 21-06-1988. After the death of late Radhakrishna Murthy, the petitioners became entitled to the property in dispute.

The petitioners further claimed that the respondents having no manner of right whatsoever over the said property, occupied the disputed land with a view to grab the same and raised residential huts in the said property, and hence they are the land grabbers within the definition of the term given in the Act and their possession and enjoyment of the property in question, was illegal.

The respondents 4 and 5 resisted the application by filing separate counters. The plea of the respondents seems to be that the 4th respondent, who was a landless poor, occupied the portion of the land in question, when it was with full of pits and stones, and erected a small hut thereon and ever since she has been residing therein along with her husband and children. Since she has been in continuous possession for more than 30 years without any interruption, she prescribed title by means of adverse possession to the said land. Of course, the 4th respondent denied the title of late Adi Lakshmamma and adoption of late Radhakrishna Murthy by Adi Lakshmamma.

The 5th respondent however pleaded that he purchased the property in question from one P. Narayana Reddy and Srinivas Reddy and has been paying tax in his name on the said land. He too denied the title of Adi Lakshmamma and adoption of late Radhakrishna Murthy by Adi Lakshmamma, as pleaded by the petitioners.

Before the Special Tribunal, evidence was adduced on either side. Two witnesses were examined on the side of the petitioners and Exs.A-1 to A-7 were got marked.

Three witnesses were examined on the side of the contesting respondents and Exs.B-1 to B-34 were got marked. Exs.C-1 and C-2 were marked by the Court. Eventually, after appreciating the evidence, both oral and documentary adduced on either side, the learned Special Tribunal dismissed the petition by holding that there had been no adoption and the contesting respondents prescribed their title over the disputed land by means of adverse possession. Having been aggrieved by the said order, as aforesaid, the petitioners carried the matter in appeal to the Special Court under the Act. Under the impugned order dated 09-08-1999, the learned Special Court reversed the findings arrived at by the Special Tribunal and consequently allowed the appeal.

As aforesaid, the contesting respondents, who are the writ petitioners, are assailing the said order.

Learned counsel for the writ petitioners represents that the Special Court committed an error by seeking to rely on the provisions of Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Maintenance Act'), and as in fact, no valid

adoption was proved by the petitioners therein, they cannot maintain the appeal as against the respondents. It is the other contention of the learned counsel that the adoption itself is invalid having been made contrary to the provisions of the Maintenance Act. The learned counsel further seeks to contend that there has been no plea and proof on record to show that the respondents therein are the land grabbers and therefore the impugned order is liable to be set aside.

Per contra, Sri Prakash Reddy, learned senior counsel, represents that the factum of adoption has not been seriously questioned by the writ petitioners. Having taken a bald plea of general denial, while setting title over the disputed land by means of adverse possession, validity of the factum of adoption cannot be a question to be raised in the instant writ petition. Learned counsel further represents that even jurisdictional question sought to be raised, late in the day,
by the writ petitioners, cannot be countenanced, having not taken that plea at any stage of the proceedings.

It may be mentioned, at the out set, that this Court is not sitting in appeal over the impugned judgment rendered by the Special Court under the Act. Finality has been attached to the said judgment under the provisions of the Act.
As the petitioners are now assailing the said judgment, they have to strictly confine themselves to the established parameters, while seeking a writ of *certiorari*. The Special Court under the impugned judgment was categorical that the petitioners by discharging the initial burden cast upon them, proved the adoption and the

respondents failed to rebut the presumption engrafted under Section 16 of the Maintenance Act, and therefore it was a clear case where petitioners proved the factum of adoption. Ex.A-2 is the registered adoption deed said to have been executed by late Adi Lakshmamma in favour of the husband of 1st respondent. Execution of the said document is beyond any doubt, since it has not been assailed when sought to be introduced. Section 16 of the Maintenance Act, is germane in the context since it has been invoked by the learned Special Court for raising the necessary presumption. The provision reads as under:

> ***"16. Presumption as to registered documents relating to adoptions:-***
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> *Whenever any document registered under any law for the time being in force is produced before any Court purporting to record and adoption made and signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."*

From a perusal of the said provision, it is obvious that the necessary presumption can be raised by the Court when the registered document purported to be the record of adoption made and signed by the person giving the child in adoption and the person taking the child in adoption. Inasmuch as Ex.A-2 was executed by late Adi Lakshmamma in favour of late Radhakrishna Murthy, Ex.A-2 strictly cannot answer the requirements under Section 16, which is a *sine qua non* for raising the presumption. It

appears, the learned Special Court overlooked Section 16 and sought to raise the necessary presumption engrafted therein. Having regard to the nature of the instant proceedings, more particularly the type of defence taken by the writ petitioners *inter alia* in the counters, it is clear that the validity of factum of adoption was not seriously disputed by the respondents, except by taking a bald plea *inter alia* in the counters denying the adoption.

It was not even suggested to PW.1 when he was examined on oath. Thus, the writ petitioners have failed to seriously dispute the factum of adoption and therefore now cannot question the validity thereof in the present writ petition, more particularly, having regard to the nature of the proceedings before us. Even in the absence of the statutory presumption engrafted under Section 16 of the Maintenance Act, inasmuch as the execution of Ex.A-2 having not been assailed in any manner, the said document, which is a registered document, in our considered view, can be validly taken into consideration, as a piece of evidence, like any other document. Since Ex.A-2, is beyond any doubt, its execution having not been assailed, it can be considered and the contents thereof can be treated as an admission on the part of late Adi Lakshmamma made *inter alia* on the said document about the factum of adoption. In the wake of the said admission on the part of the person concerned, who said to have adopted late Radhakrishna Murthy, the denial on the part of the writ petitioners, who are third parties, cannot falsify the factum of adoption. It may be mentioned that no other person either claiming as a heir or interested in Late Adi Lakshmamma, claimed her properties as against the petitioners. When real persons who are the kith and kin of Late Adi Lakshamamma are not disputing the title and

interest of the respondents qua the disputed land the plea of the writ petitioners cannot outweigh the document. Ex.A-2 for the above reasons in our considered view constitutes a valid piece of evidence, which unequivocally proves the factum of adoption.

Late in the day, it is now sought to be contended before us that even assuming that there has been an adoption as contended by the respondents herein, it was not valid having not been made in accordance with Section 10 of the Hindu Adoption and Maintenance Act. It is the contention of the learned counsel for the writ petitioners that clause (iv) of Section 10 envisages that age of the child shall not be beyond 15 years at the time of adoption and late Radhakrishna Murthy has been adopted while he was in service which was obviously beyond 18 years and hence the adoption having been made contrary to the mandatory provisions contained in Section 10 of the Maintenance Act, is not valid. We are afraid that we cannot accept the said contention of the learned counsel, for the simple reason that such a plea of the validity of adoption has not been taken earlier and no evidence whatsoever is emanating from the record showing the age of Radhakrishna Murthy at the time of alleged adoption. Arguments cannot be addressed in air without there being any supporting evidence emanating from the record. Since it is not emerging from the record that late Radhakrishna Murthy had completed the age of 15 years at the time of adoption, even the validity of the adoption cannot legitimately be questioned, at this stage, in the instant writ petition.

Above all, an application was filed by respondents

1 to 5 herein before the Special Tribunal under the Act for declaration that the writ petitioners were the land grabbers. Having regard to the nature of application, more particularly, the plea taken by the writ petitioners *inter alia* in the counters, we are afraid that it is not open to the writ petitioners to seriously assail the factum of adoption or the validity thereof. The petitioners before the Special Tribunal claimed that they succeeded to the properties of late Adi Lakshmamma and they had been in possession of the same for some time till the efforts have been made to grab the land from them. The title of the original owner namely late Adi Lakshmamma has been sought to be proved by filing a registered title deed in the shape of Ex.A-1. The execution of Ex.A-1 is also not in question before the Tribunal. When the petitioners are thus tracing the title of late Adi Lakshmamma and were in possession of the said land for some time as legal heirs of late Adi Lakshmamma, the question remains to be considered by us legitimately is whether the writ petitioners are the land grabbers or not and they have committed any act of land grabbing. Of course, that becomes the jurisdictional question. Even that jurisdictional question has not been assailed by the writ petitioners at any stage of the proceedings so far. Even otherwise, having regard to the nature of the plea taken by the writ petitioners that they occupied the land in question and prescribed title thereto by means of adverse possession, it is obvious that their initial entry on to the land was not lawful. When once the initial entry is not lawful, the writ petitioners squarely answer the definition of land grabbers as enjoined under Section 2 (d) of the Act. As discussed hereinabove, the jurisdictional question has not been raised at any stage of the proceedings. Having taken the plea of adverse

possession, the writ petitioners failed to adduce the evidence to show unequivocally that they prescribed the title to the land in question by means of adverse possession. The learned Special Court having regard to the respective pleas taken by the parties and evidence adduced in support thereof unequivocally was of the view that the writ petitioners failed to prove the plea of adverse possession. Once it is obvious from the record that their initial entry on to the land was not lawful and when the writ petitioners failed to prove that their possession over the disputed land is adverse to the original owners viz., respondents 1 to 5 herein and they prescribed title having been in possession thereof for more than a period of 12 years, their possession obviously becomes unlawful. The learned Special Court rightly relied upon the following passage from the judgment of Apex Court in ***MAHESH CHAND SHARMA Vs. RAJ KUMARI SHARMA***[1]**;** Which may be excerpted hereunder; thus:

> "36. In this connection, we may emphasise that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession."

It is obvious that there has been no equity in the writ petitioners who are obviously trying to dispute the title of respondents 1 to 5 by taking a plea of adverse possession.

In that view of the matter also the possession of the writ petitioners cannot be considered as possession having been

entered into initially by lawful means. When the petitioners failed to prove their title by means of adverse possession, the necessary corollary that emerges in the context, unequivocally seems to be that they are the land grabbers.

As discussed hereinabove, late in the day, the jurisdictional question is sought to be raised for the first time before us. In this regard, the learned counsel for the writ petitioners seeks to place reliance upon the judgments of Division Bench and Full Bench of this Court in ***M.YADAGIRI REDDY v. V.C. BRAHMANNA AND ANOTHER***[2]; ***STATE OF ANDHRA PRADESH v. PRAMILA MODI AND OTHERS***[3]; and ***MOHD. SIDDIQ ALI KHAN AND OTHERS v. SHAHSUN FINANCE LIMITED, CHENNAI AND ANOTHER***[4] respectively. Of the above judgments, the latest is the one rendered by the Full Bench of this Court: That was a case where having regard to the dispute between the parties *inter se*, the date of filing application before the said Court under the Act, the jurisdictional question was rightly raised by the writ petitioners. The Full Bench, under the circumstances, rightly ruled that the Special Court was duty bound to consider before taking cognizance of the case, *prima facie* whether the application was frivolous or vexatious one and it was not an automatic affair for the Court to take cognizance. In one of the judgments relied upon by the petitioners,

a Division Bench of this Court held that unless it was shown that the possession was taken illegally with necessary intention or animosity, the mere fact that one has unlawfully entered into the possession of property would not be enough to characterize one to be a land grabber. More or less, the same is the dictum laid down

by the other Bench sought to be relied upon by the learned counsel. Even in the latest
Full Bench judgment, the law has been succinctly laid down that the initial occupation or possession of the land in dispute must be shown to be illegal or without any basis and without any lawful entitlement thereto before asking one to be dubbed as a land grabber.

Coming to the instant case, having regard to the plea taken by the writ petitioners, it is obvious that their entry on to the land in dispute was not lawful, inasmuch as they have not pleaded any title or entitlement to the said land and thus they came to occupy the land without their being any legal title or basis. It is obvious, therefore, it is a case of mere occupation, which is not lawful, on a land, obviously belonging to some third party, at any rate, not of their own. Under the facts and circumstances of the instant case, we are of the considered view that the writ petitioners squarely answered the definition of land grabber as enjoined under Section 2(d) of the Act.

The 2nd petitioner herein, who is the 5th respondent before the Special Tribunal, said to have taken up the plea that he purchased the land by means of an agreement of sale from two persons, who have not been shown, in any manner, by any evidence, whatsoever, were the original owners thereof. It is trite that a contract of sale, cannot confer any title; and title can be passed only by means of a registered instrument of transfer as envisaged under Section 54 of the Transfer of Property Act. Having taken up the plea that the 2nd petitioner failed to adduce

any evidence to substantiate the same and the Special Court under the impugned order,

in our considered view, has rightly rejected the said plea.

In having done so, we are clear that the Special Court has not committed any serious error or illegality. When a clear finding as arrived at by the Special Court, *inter alia*, in the impugned order in respect of which a finality has been attached under the statute and when we are not sitting in an appeal over the said impugned order, unless a serious error or illegality in reaching the said conclusion is shown before us, we are afraid while exercising the jurisdiction under Article 226 of the Constitution of India, we cannot upset the finding of fact reached, legitimately, by the Special Court. In that view of the matter and for the reasons herein above discussed, the writ petition must fail. Furthermore, since the writ petitioners are not able to show any jurisdictional error or illegality said to have been committed by the Special Court in rendering the impugned order.

For the above reasons the writ petition fails and is dismissed with costs.

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T.CH.SURYA RAO, J

Date: 06-06-2006
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G. CHANDRAIAH, J

[1] AIR 1996 SC 869

[2] 2005 (1) ALD 1 (DB)

[3] 2005 (4) ALD 105 (DB)

[4] 2005 (2) ALD 675 (FB)